



PATENT  
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Customer No. 22882  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#22 / IDS  
8/7/01

In re Application of: )

Gary Karlin Michelson )

Serial No.: 08/480,461 )

Filed: June 7, 1995 )

Group Art Unit: 3764

Examiner M. Brown

For: INSTRUMENTATION FOR THE )  
SURGICAL CORRECTION OF HUMAN )  
THORACIC AND LUMBAR SPINAL )  
DISEASE FROM THE LATERAL )  
ASPECT OF THE SPINE )

**RECEIVED**

AUG 3 2001

TECHNOLOGY CENTER R3700

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**  
**UNDER 37 C.F.R. § 1.97(c)**

07/31/2001 BSAYASI1 00000005 08480461

03 FC:126

180.00 DP

Further to the Information Disclosure Statements dated February 22, 2001 and November 23, 1998 and pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), applicant brings to the attention of the Examiner the documents listed on the attached PTO 1449. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final Action or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$180.00 as specified by Section 1.17(p).

A copy of the following document is enclosed:

U.S. Patent No. 3,719,186 issued March 6, 1973 to Merig, Jr.

Copies of the remaining documents were previously submitted.

Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

The present application Serial No. 08/480,461 is a divisional application of Serial No. 08/394,836, now U.S. Patent No. 5,772,661, which is a continuation-in-part application of Serial No. 08/074,781, now U.S. Patent No. 5,484,437, which is a continuation-in-part application of Serial No. 07/968,240, now U.S. Patent No. 5,741,253, which is a continuation application of Serial No. 07/698,674, now abandoned, which is a divisional application of Serial No. 07/205,935, now U.S. Patent No. 5,015,247 and a continuation-in part application of Serial No. 08/219,626, now abandoned.

Applicant brings to the Examiner's attention that the litigations discussed in the Information Disclosure Statement dated November 5, 1998 ("Lit. 1" and "Lit. 2") are no longer pending. The jury in "Lit. 2" found all asserted claims of the '253 patent not invalid in view of the art asserted by Defendants.

Applicant also brings to the Examiner's attention that the '253 patent and U.S. Patent No. 5,484,437 (a continuation-in-part of the '674 application mentioned above) are the subject of litigation in the United States District Court for the Western District of Tennessee, Western Division, Case No. 99-2656GV, hereinafter referred to as Litigation 3 ("Lit. 3"). The claims of the '253 patent are generally directed to a method

for preparing adjacent vertebrae to receive an implant. The claims of the '437 patent are generally directed to a method for inserting an implant.

In Litigation 3, the Defendants have asserted that various references are pertinent to the issue of validity of the '253 patent under 35 U.S.C. §§ 102 and 103. Applicant notes for the Examiner on the attached Form PTO-1449 in the column for the Examiner's initials the references identified by Defendants in Litigation 3 by the designation "Lit. 3." All references except for U.S. Patent No. 3,719,186 have been previously cited in an earlier Information Disclosure Statement provided for the present application.

The Defendants in Litigation 3 have also raised allegations of inequitable conduct in relation to the procurement of the '253 patent for failing to (1) highlight U.S. Patent No. 4,570,624 to Wu and (2) disclose EP 0077159 to Atkins and an article written by Jose Vich ("Anterior cervical interbody fusion with threaded cylindrical bone," *Neurosurg* 63: 750-753, 1985). The Plaintiff denies the allegations. Discovery documents relating to the aforementioned litigation are available upon request.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and applicant determines that the cited document(s) do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.


Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

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